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PATENT
Atty. Dkt. No. Lee 6-1 (LCNT/122291)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of: Lee et al.

§ Case Number: Lee 6-1
(LCNT/122291)

Serial No.: 09/672,204

§ Group Art Unit: 2157

Confirmation No.: 8791

§ Examiner: Osman, Ramy M.

Filed: September 28, 2000

For: METHOD AND APPARATUS FOR
SONET/SDH RING LOAD BALANCING

§

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Date <u>7-2-07</u>	<u>C. W. Wilson</u>

Dear Sir or Madam:

REPLY BRIEF

Appellant submits this Reply Brief to the Board of Patent Appeals and Interferences in response to the Examiner's Answer dated April 30, 2007 in the Appeal of the above-identified application.

The Commissioner is authorized to charge any fees due, including extension of time and excess claim fees, to counsel's Deposit Account No. 20-0782/LCNT/122291.

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REMARKS

In Section 10 of The Examiner's Answer (Response to Arguments), the Examiner restated his reasons given June 5, 2006 to support his decision of anticipation and obviousness with respect to the claims on appeal. Despite the Examiner's Answer, Appellant still upholds that the rejection of claims 1-23 as being unpatentable under 35 U.S.C. §102(b) and §103(a) are improper.

The Examiner characterized Morley as teaching facilities having a bandwidth utilization level. Appellant respectfully disagrees. The Examiner contends that Morley states that each span can be a four fiber BLSR span and the transport signals may be routed provided that the total load on any span does not exceed its line capacity. The Examiner is reading the fibers of Morley as equivalent to facilities of the present invention and the spans of Morley as equivalent to the links of the present invention. In the present invention, each facility has a bandwidth utilization level. However, unlike the present invention, Morley determines the capacity of the span, denoted as *c*. Examiner is mistaken in his assertion that since "Morley states that each span can be a four fiber BLSR span. The four fibers (i.e. *facillities*) also have a capacity *c* because fibers define the span." Specifically, the threshold of the span, not the individual fibers of Morley, is utilized. Morley fails to teach or suggest that each facility has a bandwidth utilization level and performs a different kind of load balancing.

Further, the facilities comprising a respective link are assigned a *user defined threshold level* or a bandwidth utilization level of a total bandwidth of a link. The utilization of bandwidth of a specific facility in a link used to complete a selected path is then checked against a preset threshold value and if the bandwidth utilization level of that facility exceeds the preset threshold, then the facility is not used to complete the selected path. (see pg 17, Argument A).

The Examiner replied that this argument was not persuasive because "*user defined threshold level*" and "*preset threshold*" are not in the claim. And, that the claim only mentions a "*bandwidth utilization level*" of a link. Applicant respectfully reminds Examiner that claims are not interpreted in a vacuum. Claims are to be

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interpreted in light of the disclosure. (see MPEP 2173.02). Support for "**bandwidth utilization level**" being a "**user set threshold**" is found, for example, at least at page 8, line 7 of Applicant's application, as filed. Where it states: "If no facilities are found, **the user set threshold or utilization level** is incrementally changed for a facility."


Claim 1 positively states that "each of said facilities having associated with it a respective bandwidth utilization level (304)." Claim 7 positively states the limitation of "a respective bandwidth utilization level for each selected facility." Claim 12 positively states that "determining the bandwidth utilization level for each selected facility within each of said at least one link (312)." Claim 17 positively states that "each one of said plurality of facilities has associated with it a respective bandwidth utilization level (304)." Claim 21 positively states that "a database (150), for storing a respective bandwidth utilization level for each of a plurality of facilities within links (A-H)." On the other hand, Morley states, as explained by the Examiner, the total load of any span does not exceed its line capacity. Morley is silent on any capacity or threshold (i.e. bandwidth utilization level) for each individual fiber (i.e., facility). Therefore, Morley merely teaches having user defined bandwidth utilization level for the link and not each facility. Thus, Morley does not anticipate the present invention.

It is respectfully submitted that the remaining responses to the Examiner's arguments are addressed by Appellant's Appeal Brief

CONCLUSION

Appellant respectfully requests that the Board reverse the rejections and pass the claims to allowance.

Respectfully submitted,


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